

2016 Second Extraordinary Session

HOUSE BILL NO. 20

BY REPRESENTATIVE REYNOLDS

1 AN ACT

2 To amend and reenact R.S. 47:287.95(A), (C)(1), (D), and (F)(2)(b) and to enact R.S.  
3 47:287.95(E), (L), and (M), relative to corporate income tax; to provide for the  
4 calculation of apportionment income for certain businesses; to provide for the  
5 weighing of certain ratios in the calculation of Louisiana income; to provide for the  
6 sourcing of certain sales; to provide for applicability; to provide for an effective date;  
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:287.95(A), (C)(1), (D), and (F)(2)(b) are hereby amended and  
10 reenacted and R.S. 47:287.95(E), (L), and (M) are hereby enacted to read as follows:

11 §287.95. Determination of Louisiana apportionment percent

12 A.(1) Air transportation. ~~The~~ Except as provided for in Paragraph (2) of this  
13 Subsection, the Louisiana apportionment percent of any taxpayer whose net  
14 apportionable income is derived primarily from the business of transportation by  
15 aircraft shall be the arithmetical average of two ratios, as follows:

16 ~~(1)~~(a) The ratio of the value of immovable and corporeal movable property,  
17 other than aircraft, owned by the taxpayer and located in Louisiana to the value of  
18 all immovable and corporeal movable property, other than aircraft, owned by the  
19 taxpayer and used in the production of apportionable income.

20 ~~(2)~~(b) The ratio of the amount of gross apportionable income derived from  
21 Louisiana sources to the total gross apportionable income of the taxpayer.

(2) For taxable periods beginning on or after January 1, 2016, and for the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation by aircraft shall be computed by means of a single ratio consisting of the ratio provided for in Subparagraph (1)(b) of this Subsection.

(3) For the purposes of this Subsection, gross apportionable income from Louisiana sources shall include all gross receipts derived from passenger journeys and cargo shipments originating in Louisiana and any other items of gross apportionable income or receipts derived entirely from sources in this state.

\* \* \*

C. Other transportation. (1)(a) ~~The~~ Except as provided in Subparagraph (b) of this Paragraph, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation, other than by aircraft or pipeline, shall be the arithmetical average of two ratios, as follows:

(i) The ratio of the value of immovable and corporeal movable property owned by the taxpayer and located in Louisiana to the value of all immovable and corporeal movable property owned by the taxpayer and used in the production of apportionable income.

(ii) The ratio of the amount of gross apportionable income from Louisiana sources to the total amount of gross apportionable income of the taxpayer.

(b) For taxable periods beginning on or after January 1, 2016, and for the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from the business of transportation, other than by aircraft or pipeline, shall be computed by means of a single ratio consisting of the ratio provided for in Item (a)(ii) of this Paragraph.

~~(b)~~(c) For the purposes of this Subsection, the gross apportionable income from Louisiana sources shall include all such income that is derived entirely from sources within the state and a portion of revenue from transportation partly without and partly within this state, to be prorated subject to rules and regulations of the

secretary, who shall give due consideration to the proportion of service performed in Louisiana.

(c)(d) For the purposes of this Subsection, the value of immovable and corporeal movable property owned by the taxpayer and used in Louisiana shall include the value of all such property regularly situated in this state, plus a pro rata of the value of all rolling stock and other mobile equipment owned by the taxpayer and used in the production of apportionable income, whether within or without this state, said proration to be made subject to rules and regulations of the secretary, who shall give due consideration to the mileage operated and traffic density within and without this state.

\* \* \*

D.(1) Service enterprises. ~~The~~ Except as provided in Paragraph (2) of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from a service business in which the use of property is not a substantial income-producing factor shall be the arithmetical average of two ratios, as follows:

(1)(a) The ratio of the amount paid by the taxpayer for salaries, wages, and other compensation for personal services rendered in Louisiana to the total amount paid by the taxpayer for salaries, wages, and other compensation for personal services in connection with the production of the net apportionable income.

(2)(b) The ratio of the gross apportionable income of the taxpayer from Louisiana sources to the total gross apportionable income of the taxpayer.

(2) For taxable periods beginning on or after January 1, 2016, and for the purpose of this Subsection, the Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from a service business in which the use of property is not a substantial income-producing factor shall be computed by means of a single ratio consisting of the ratio provided for in Subparagraph (1)(b) of this Paragraph.

1                   (3) For the purposes of this Subsection, the gross apportionable income from  
2                   Louisiana sources shall include the revenue from services ~~performed in~~ sourced to  
3                   this state, and any other gross income derived entirely from sources within this state.

4                   E. Oil and gas.

5                   (1) For taxable periods beginning on or after January 1, 2016, for the purpose  
6                   of this Subsection, the Louisiana apportionment percent of any taxpayer whose net  
7                   apportionable income is derived primarily from the exploration, production, refining,  
8                   or marketing of oil and gas shall be the arithmetical average of four ratios, as  
9                   follows:

10                  (a) The ratio of the value of the immovable and corporeal movable property  
11                  owned by the taxpayer and located in Louisiana to the value of all immovable and  
12                  corporeal movable property owned by the taxpayer and used in the production of the  
13                  net apportionable income.

14                  (b) The ratio of the amount paid by the taxpayer for salaries, wages, and  
15                  other compensation for personal services rendered in this state to the total amount  
16                  paid by the taxpayer for salaries, wages, and other compensation for personal  
17                  services in connection with the production of net apportionable income.

18                  (c) The ratio of net sales made in the regular course of business and other  
19                  gross apportionable income attributable to this state to the total net sales made in the  
20                  regular course of business and other gross apportionable income of the taxpayer. The  
21                  ratio of net sales as provided in this Subparagraph shall be double-weighted or  
22                  counted twice.

23                  (2) For purposes of this Subsection, "exploration, production, refining, or  
24                  marketing of oil and gas " shall mean:

25                  (a) Any taxpayer whose income is primarily derived from the production or  
26                  sale of unrefined oil and gas.

27                  (b) Any taxpayer defined as an integrated oil company per the United States  
28                  Internal Revenue Code - 26 U.S.C. 291(b)(4), or integrated oil companies that refine,  
29                  produce, and have marketing operations, whose income in Louisiana is principally  
30                  derived from production and sale of unrefined oil and gas, and who also engage in

1        significant marketing of refined petroleum products in Louisiana. Provided, any  
2        taxpayer, whose activities during the taxable year do not include any "gross receipts  
3        from retail sales of oil and/or natural gas", or any "refinery activities of oil and/or  
4        natural gas", will not be considered as an integrated oil company for Louisiana tax  
5        purposes, notwithstanding such taxpayer may be a "related party" or a "member of  
6        the federal consolidated group" under the United States Internal Revenue Code.

7                    F.

8                                    \*           \*           \*

9                    (2)

10                                   \*           \*           \*

11                    (b)(i) For taxable periods beginning on or after January 1, 2006, and for the  
12        purpose of this Subsection, the Louisiana apportionment percent of any taxpayer  
13        whose net apportionable income is derived primarily from the business of  
14        manufacturing or merchandising shall be computed by means of a single ratio  
15        consisting of the ratio provided for in Subparagraph (1)(c) of this Subsection.

16                    (ii) For taxable periods beginning on or after January 1, 2016, and for the  
17        purpose of this Subsection, the Louisiana apportionment percent of any taxpayer  
18        whose net apportionable income is derived primarily from transportation by pipeline  
19        or from any business not included in Subsections A through E of this Section shall  
20        be computed by means of a single ratio consisting of the ratio provided for in  
21        Subparagraph (1)(c) of this Subsection.

22                                   \*           \*           \*

23                    L. Sourcing of certain sales.

24                    (1) Sales other than sales of tangible personal property are to be sourced to  
25        this state if the taxpayer's market for the sale is in this state. The taxpayer's market  
26        for a sale is in this state and the sale is assigned to the state for the purpose of this  
27        Section as follows:

28                    (a) In the case of sale, rental, lease, or license of immovable property, if and  
29        to the extent the property is located in the state.

1                   **(b) In the case of rental, lease, or license of tangible personal property, if and**  
2                   **to the extent the property is located in the state.**

3                   **(c) In the case of sale of a service, if and to the extent the service is delivered**  
4                   **to a location in the state. The delivery of a tangible medium representing the output**  
5                   **of a service does not control the sourcing of receipts from the underlying service.**

6                   **(d) In the case of lease or license of intangible property, including a sale or**  
7                   **exchange of such property where the receipts from the sale or exchange derive from**  
8                   **payments that are contingent on the productivity, use, or disposition of the property,**  
9                   **if and to the extent the intangible property is used in the state.**

10                   **(e) In the case of the sale of intangible property, other than as provided in**  
11                   **Subparagraph (d) of this Paragraph, where the property sold is a contract right,**  
12                   **government license, or similar intangible property that authorizes the holder to**  
13                   **conduct a business activity in a specific geographic area, if and to the extent that the**  
14                   **intangible property is used in or otherwise associated with the state; provided,**  
15                   **however, that any sale of intangible property, not otherwise described in this**  
16                   **Subparagraph and Subparagraph (d) of this Paragraph, shall be excluded from the**  
17                   **numerator and the denominator of the sales factor.**

18                   **(2) In the case where the taxpayer's customer is an individual, the taxpayer**  
19                   **shall source receipts from the sale of a service as follows:**

20                   **(a) In the case where a taxpayer's customer is a natural person and the**  
21                   **service provided is a direct personal service, the sale shall be sourced to the state**  
22                   **where the customer received the direct personal service.**

23                   **(b) Services that are not direct personal services that are delivered to**  
24                   **customers who are natural persons with a Louisiana billing address shall be sourced**  
25                   **to this state.**

26                   **(c) In the case where the sourcing methodology specified by Subparagraph**  
27                   **(a) or (b) of this Paragraph fails to clearly reflect the taxpayer's market in this state,**  
28                   **the taxpayer may utilize, or the department may require, the use of other criteria and**  
29                   **methodologies that will reasonably approximate the taxpayer's market in this state.**  
30                   **If an alternate approach is utilized, the taxpayer shall attach to the tax return a**

1 detailed explanation of why it was unreasonable to utilize the methodology specified  
2 by Subparagraph (a) or (b) of this Paragraph and an explanation of the methodology  
3 used. If the taxpayer fails to make such a disclosure on the return, the taxpayer shall  
4 be presumed to consent to the sourcing as detailed in Subparagraph (a) or (b) of this  
5 Paragraph as applicable.

6 (3) In the case where the taxpayer's customer is an entity that is unrelated to  
7 the taxpayer, the taxpayer shall source receipts from the sale of a service as follows:

8 (a) To the extent a service is provided to an unrelated entity and the service  
9 being provided has a substantial connection to a specific geographic location, the  
10 income shall be sourced to Louisiana if the geographic location is in this state. If the  
11 service receipts have a substantial connection to geographic locations in more than  
12 one state, the sales shall be reasonably sourced between those states.

13 (b) To the extent a service is provided to an unrelated entity and the service  
14 being provided does not have a substantial connection to a specific geographic  
15 location, sales from services delivered to unrelated entities shall be sourced to the  
16 commercial domicile of the taxpayer.

17 (c) In the case where the sourcing methodology specified by Subparagraph  
18 (a) or (b) of this Paragraph fails to clearly reflect the taxpayer's market in this state,  
19 the taxpayer may utilize, or the department may require, the use of other criteria and  
20 methodologies that will reasonably approximate the taxpayer's market in this state.  
21 If an alternate approach is utilized, the taxpayer shall attach to the tax return a  
22 detailed explanation of why it was unreasonable to utilize the methodology specified  
23 by Subparagraph (a) or (b) of this Paragraph and an explanation of the methodology  
24 used. If the taxpayer fails to make such a disclosure on the return, the taxpayer shall  
25 be presumed to consent to the sourcing as detailed in Subparagraph (a) or (b) of this  
26 Paragraph as applicable.

27 (d) The secretary shall promulgate rules pursuant to the Administrative  
28 Procedure Act concerning the sourcing of the sales of services between related  
29 entities.

1                   (e) As used in this Subsection, a related entity shall include:

2                   (i) A stockholder, or a stockholder's partnership, or juridical person, if the  
3                   stockholder and the stockholder's partnerships, or juridical persons, own directly,  
4                   indirectly, beneficially, or constructively, including as provided for under 26 U.S.C.  
5                   318, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding  
6                   stock.

7                   (ii) A corporation, or a party related to the corporation in a manner that  
8                   would require an attribution of stock from the corporation to the party or from the  
9                   party to the corporation under the attribution rules of 26 U.S.C. 318, if the taxpayer  
10                  owns, directly, indirectly, beneficially, or constructively, at least fifty percent of the  
11                  value of the corporation's outstanding stock.

12                  (iii) "Related party" means any member of a controlled group of corporations  
13                  as defined in 26 U.S.C. 1563, or any other person that would be a member of a  
14                  controlled group if rules similar to those in 26 U.S.C. 1563, were applied to that  
15                  person.

16                  (5) Whenever a taxpayer is subjected to different sourcing methodologies  
17                  regarding intangibles or services by the department and one or more other state  
18                  taxing authorities, the taxpayer may petition for, and the department shall participate  
19                  in, and encourage the other state taxing authorities to participate in, non-binding  
20                  mediation in accordance with rules promulgated in accordance with the  
21                  Administrative Procedure Act.

22                  M. If the taxpayer is not taxable in a state to which a sale is assigned or if the  
23                  state of assignment cannot be determined or reasonably approximated pursuant to  
24                  this Section and the regulations thereunder, the sale shall be excluded from the  
25                  numerator and the denominator of the sales factor.

26                  Section 2. The provisions of this Act shall be applicable to all taxable periods  
27                  beginning on and after January 1, 2016.

28                  Section 3. This Act shall become effective upon signature by the governor or, if not  
29                  signed by the governor, upon expiration of the time for bills to become law without signature



1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
3 effective on the day following such approval.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_